



**Australian Government
Refugee Review Tribunal**

Country Advice China

China – CHN36905 – Falun Gong –
Administrative detention – Notarised Non-
Criminal Record Certificates

22 June 2010

1. Would a Falun Gong practitioner, who has been detained on several occasions between 2005 and 2009 for periods ranging between a few days and three months, be regarded as having a criminal record in China?

A person would only have a criminal record if they were convicted of a criminal offence. They would not have a criminal record if they were detained but not convicted, or if they were subject to administrative detention.

The Department of Foreign Affairs and Trade (DFAT) provided advice in March 2007 which indicates that if a person was arrested and detained but not convicted, then they would not be considered to have committed a criminal offence. The advice states that “criminal suspects” can be legally held for a maximum of six months but in practice are sometimes held for longer periods of time. Individuals who are subject to administrative detention are also “not considered to have committed a criminal offence, regardless of the detention period”. DFAT states that administrative detention is used to detain “religious dissidents”. The following are the relevant extracts from the DFAT report:

Administrative detention is by its nature an extra-judicial form of punishment: authorities do not issue arrest warrants and those punished in this way are not tried or convicted of a criminal offence (but would likely have a record of their detention placed on their personal file)

...If, however, the person was arrested and detained for a period but not subsequently prosecuted, or prosecuted but not convicted, then Chinese authorities would not consider that the person had committed a criminal offence. Under the Criminal Procedure Law (Articles 124-128), a criminal suspect may be detained after arrest and during the investigation phase for a maximum of six months (allowing for all possible extensions). In practice, criminal suspects are sometimes held beyond this maximum period.

...If the detention was through another process, for example administrative detention (commonly used against prostitutes and drug users but also used to detain religious and political dissidents: see BJ552093L) or psychiatric detention, then Chinese authorities would not usually consider that the person had committed a criminal offence, regardless of the detention period.

...As a general point, we would note that China is still far from complying with rule of law standards. Chinese local authorities sometimes detain people or otherwise subject them to punitive measures in a way which is not in accordance with Chinese laws. Similarly, some areas of China follow practices which do not conform with national laws and regulations.¹

On 14 September 2006 DFAT advised that Falun Gong practitioners who are detained are usually subject to administrative detention (also known as re-education through labour). The report states that “the period of detention could be weeks or years, depending both on practitioners’ past actions and their willingness to repudiate their actions and recant their beliefs”.²

¹ Department of Foreign Affairs and Trade 2007, *DFAT Report 612*, 16 March – Attachment 1.

² DIMIA Country Information Service 2006, *Country Information Report No. 06/53 – China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September – Attachment 2.

2. What period of time would a person have to have served in prison in order to be refused a notarial certificate stating that there was “no record of committing offences against the criminal law during his residence in China”?

Reports indicate that notarised non-criminal record certificates should only be issued to individuals who have not been convicted of a criminal conviction. Individuals who are detained but not convicted or who are subject to administrative detention should be able to obtain notarised non-criminal record certificates. The period of detention should not impact upon an individual’s ability to obtain notarised non-criminal record certificates. Reports indicate, however, that the procedures regarding the issuing of the notarised non-criminal record certificates differ regionally within China.

DFAT advice, dated March 2007 indicates that individuals who have been detained but not convicted of a criminal offence may be able to gain a notarised non-criminal record certificate from the Public Security Bureau (PSB). The advice also states that individuals who have been subject to administrative detention should be able to obtain a notarised non-criminal record certificate. However, DFAT advised that the PSB in Beijing “would not discuss their procedures for issuing these certificates”. DFAT also states that according to a Chinese legal academic “PSBs in different areas had differing rules regarding issuing certificates of non-criminal record (and implied that it could even be possible in certain circumstances for someone who had been convicted of a criminal offence to obtain a certificate of no-criminal record).”³

The US Department of State’s ‘Visa Reciprocity and Country Documents – China’ website discusses the use of notarial documents and certificates in China. The website states that “persons without a criminal record will be able to obtain a certificate to that effect”. The website provides the following information on police records in China:

Generally available, reliable. Persons should apply for a certificate of no criminal record at the local Public Security Bureau (PSB) (or certain types of employers such as state owned enterprises), then make application to the notary office for a certificate based on the PSB document. Persons without a criminal record will be able to obtain a certificate to that effect. Certificates for individuals with one or more criminal convictions will list all convictions for which records still exist. The certificates purport to reflect all criminal convictions during residence in China.⁴

The website of the Australian Embassy in China states that the application procedures for Certificates of no Criminal Conviction “differ from region to region”:

There are over 3,000 Public Notary Offices (公证处 gongzhengchu) in counties, autonomous areas, and municipalities across China.

For the contact number of your local Public Notary Office, call directory assistance in China on 114. Public Notary Offices are accredited by the Chinese government to perform a number of notarial roles, including:

Notarising the authenticity of signatures, translations, copies of certificates, and photocopies with originals; and

Notarising facts that amount to civil legal acts such as birth, death, marriage, divorce, kinship, identity and qualifications, and the issuing of the relevant Notarial Certificate – including “**Certificates of No Criminal Conviction**”

Please note that Public Notary Offices’ application procedures for Certificates of No Criminal Conviction (CNCC) differ from region to region, as does the title of the CNCC

³ Department of Foreign Affairs and Trade 2007, *DFAT Report 612*, 16 March – Attachment 1.

⁴ US Department of State – Bureau of Consular Affairs (undated), ‘Visa Reciprocity and Country Documents – China’ http://travel.state.gov/visa/frvi/ reciprocity/ reciprocity_3537.html – Accessed 9 July 2009 – Attachment 3.

itself. Depending on the Public Notary Office, a CNCC may be referred to as a “Certificate of No Criminal Record” (无犯罪记录公证 Wufanzui jilu gongzheng), “Certificate of No Criminal Sanction” (无刑事处分公证书/未受刑事处分公证书 Wuxingshi chufen gongzhengshu/Weishou xingshi chufen gongzhengshu), or simply a “Notarial Certificate” (公证书 Gongzhengshu) certifying no criminal record.

To obtain a CNCC, you should contact your local Public Notary Office, who should be able to advise you on the application procedures specific to that locality.⁵

Attachments

1. Department of Foreign Affairs and Trade 2007, *DFAT Report 612*, 16 March.
2. DIMIA Country Information Service 2006, *Country Information Report No. 06/53 – China: Return of failed asylum seekers*, (sourced from DFAT advice of 14 September 2006), 15 September. (CISNET China CX161676)
3. US Department of State – Bureau of Consular Affairs (undated), ‘Visa Reciprocity and Country Documents – China’
http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3537.html – Accessed 9 July 2009.
4. ‘Additional Information – Partner Migration’ (undated), Australian Embassy in China website <http://www.china.embassy.gov.au/bjng/DIMA090401.html> – Accessed 18 August 2009.

⁵ ‘Additional Information – Partner Migration’ (undated), Australian Embassy in China website <http://www.china.embassy.gov.au/bjng/DIMA090401.html> – Accessed 18 August 2009 – [Attachment 4](#).